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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1904

No. 231

JANNETTE HOBSON, ET AL., PETITIONERS,

LOUISIANA.

ON PETITION FOR WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF THE
STATE OF LOUISIANA.

RECEIVED FOR THE RECORD OF THE SUPREME COURT, 1904
CHIEF JUSTICE MARSHALL, 1904

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 619

JANNETTE HOSTON, ET AL., PETITIONERS,

vs.

LOUISIANA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF LOUISIANA

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[fol. 1]

**IN THE NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA**

INFORMATION—Filed April 27, 1960

Ralph L. Roy Assistant District Attorney of the Nineteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that

- | | |
|-------------------------|-------------------------|
| 1. Jannette Hoston (CF) | 5. Marvin Robinson (CM) |
| 2. Donald Moss (CM) | 6. John W. Johnson (CM) |
| 3. Jo Ann Morris (CF) | 7. Felton Valdry (CM) |
| 4. Kenneth Johnson (CM) | |

late of the Parish of East Baton Rouge, on the Twenty-eighth day of March in the year of our Lord One Thousand Nine Hundred and Sixty with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, feloniously did unlawfully violated Article 103 (Section 7) of the Louisiana Criminal Code in that they refused to move from a cafe counter seat at Kress' Store at North Third Street and Main Street, Baton Rouge, Louisiana, after having been ordered to do so by the agent of Kress' Store; said conduct being in such manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

Ralph L. Roy, Assistant District Attorney, Nineteenth Judicial District of Louisiana.

[fol. 2]

[File endorsement omitted]

**NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE**

STATE OF LOUISIANA

No. 35567

STATE OF LOUISIANA versus

1. JANNETTE HOSTON (CF) Southern University (all)
2. DONALD MOSS (CM)
3. JO ANN MORRIS (CF)
4. KENNETH JOHNSON (CM)
5. MARVIN ROBINSON (CM)
6. JOHN W. JOHNSON (CM)
7. FELTON VALDRY (CM)

INFORMATION

DISTURBING THE PEACE

Filed April 27 A. D., 1960

Betty Brady, Deputy Clerk, Nineteenth Judicial District Court.

Assistant District Attorney

WITNESSES:

Mr. R. R. Matthews, Mgr., Kress, Chief Arrighi, Captain Weiner, Off. Jeffries, J. Paul, L. Devall, G. Watts.

[fol. 3]

IN THE NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

Case Number

STATE OF LOUISIANA,

VS.

JANNETTE HOSTON, et al.

APPLICATION FOR BILL OF PARTICULARS—Filed April 25, 1960

Now into this Honorable Court come Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, defendants in the above entitled and numbered cause, and before arraignment, plead that they are unable to properly prepare their defenses herein, until they are furnished with a Bill of Particulars upon the following, to-wit:

—1—

At what time and place was the defendants conduct of such a manner as to unreasonably disturb the public?

—2—

State the time, place, names and addresses of the persons in whose presence the defendants' conduct was of such a manner as to unreasonably disturb the public.

—3—

Describe the act or acts the defendants allegedly unlawfully committed in violation of Article 103 of the Louisiana Criminal Code in such manner as to unreasonably disturb the public.

—4—

State the specific acts or offenses the defendants committed, giving the specific time, place and the names, addresses and official capacity of the persons in whose pres-

ence the acts or offenses were committed in such a manner [fol. 4] as to unreasonably disturb the public.

—5—

In what manner did the defendants conduct themselves in the presence of others so as to unreasonably disturb the public?

—6—

What acts, if any, and in what manner were said acts committed, so as to unreasonably disturb the public, and in whose presence were said acts committed?

—7—

State the name, address, and the official capacity of the agent of Kress' Store, North Third and Main Streets, Baton Rouge, Louisiana, who ordered the defendants to move from a cafe counter seat at or in the said Kress' Store, and by whose authority and/or under what authority the agent of the Kress' Store was acting when said agent ordered the defendants to move from a cafe counter seat at the said Kress' Store?

—8—

State the reasons or causes for the agent of the said Kress' Store to request or ask the defendants to move from a cafe counter seat at or in said Kress' Store and by whose authority and/or under what authority was the said agent of said Kress' Store acting when said agent requested and/or asked the defendants to move from a cafe counter seat at or in said Kress' Store.

—9—

State whether or not the agent of the said Kress' Store requested the defendants to move from a cafe counter seat merely because the defendants were and are members of the Negro race, and whether or not the agent of said Kress' Store was acting under the segregation laws of the State of Louisiana and/or under the laws, ordinances or regulations of the City of Baton Rouge, Louisiana, or whether or not the said agent of the said Kress' Store was acting under the laws, ordinances, regulations, customs and/or usages

of the State of Louisiana and/or the City of Baton Rouge, Louisiana when said agent requested the defendants to move from said cafe counter seats.

[fol. 5] Wherefore, your defendants, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, pray that the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, be ordered by this Honorable Court to furnish the said Bill of Particulars above requested; and that service of same be made upon your defendants; and that, the Honorable District Attorney for the Parish of East Baton Rouge, State of Louisiana, be duly served with a copy hereof.

And your defendants pray for all such other relief to which they are or may be entitled.

Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson, Felton Valdry.

Attorney for Defendants; Johnnie A. Jones.

[fol. 6] *Duly sworn to by Jannette Hoston, Donald Moss, et al., jurat omitted in printing.*

[File endorsement omitted]

[fol. 7]

IN THE NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

MOTION TO QUASH—Filed April 27, 1960

To the Honorable, the Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

And now into this Honorable Court come Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Mar-

vin Robinson, John W. Johnson and Felton Valdry, the defendants in the above entitled and numbered cause, move to quash the Bill of Information for the following reasons, to-wit:

—1—

That the Bill of Information is insufficient to charge an offense under Article 103 of the Louisiana Criminal Code, in that it fails to allege any unlawful act or acts the defendants had committed or were committing when they were ordered to move from a cafe counter seat at Kress' Store, North Third and Main Streets, Baton Rouge, Louisiana.

—2—

That the said Bill of Information is insufficient to charge an offense under Article 103 of the Louisiana Criminal Code, because it merely alleges that the defendants refused to move from a cafe counter seat at the said Kress' Store after having been ordered to do so by the agent of Kress' Store, and fails to allege that the defendants committed any unlawful act or acts set forth and/or enumerated under LSA-R. S. 14:103 of 1950, as amended.

—3—

That the said Bill of Information does not allege any unlawful act or acts committed by the defendants which set forth and enumerated in and/or under LSA-R. S. 14:103 [fol. 8] of 1950, as amended.

—4—

That the said Bill of Information fails to show or allege the manner in which the defendants disturbed the peace; that the mere refusal of the defendants to move from a cafe counter seat when ordered to do so by an agent of the said Kress' Store is not embraced within the terms of said Statute, LSA-R. S. 14:103, and does not constitute a disturbance of the peace, as such.

—5—

That if said Statute, LSA-R. S. 14:103 of 1950, as amended, does embrace within its terms and meanings that

"the defendants' mere refusal to move from a cafe counter seat when ordered to do so by an agent or any other person or persons of the said Kress' Store constitutes a disturbance of the peace," then, and in that event said Statute, LSA-R. S. 14:103, is unconstitutional, in that, it deprives your defendants of their privileges, immunities and/or liberties, without due process of law and denies them the equal protection of the laws guaranteed by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

—6—

That while the arrests and charges were for "Disturbing the Peace," there was not a disturbance of the peace, except for the activity in which defendants engaged to protest segregation, and that the use of the criminal process in such a situation denies and deprives the defendants of their rights, privileges, immunities and liberties guaranteed your defendants, each, citizens of the United States, by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

—7—

That your defendants, each, allege and aver that they are members of the Negro race and were, on the 28th day of March, 1960, college students matriculated in Southern University and A & M College, for Negroes, at Baton Rouge, Louisiana; that your defendants, each, in protest of the segregation laws of the State of Louisiana, did on the 28th day of March, 1960, "sit in" a cafe counter seat reserved [fol. 9] for members or persons of the White race, and for which activity your defendants, each, were arrested, charged criminally with Disturbing the Peace, jailed and placed under a Fifteen Hundred (\$1,500.00) Dollars bond, each.

Wherefore, your defendants, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, each, pray that this Motion to Quash be maintained and that the said Bill of Information as to them, each, and as for as they, each, are concerned, be declared null and void, and that they, each, be discharged therefrom.

Movers further pray for all necessary orders, and for general and equitable relief in the premises.

Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson, Felton Valdry.

Attorney for Defendants: Johnnie A. Jones.

[fol. 10] *Duly sworn to by Jannette Hoston, Donald Moss, et al., jurat omitted in printing.*

[File endorsement omitted]

[fol. 11]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

DIVISION "A"

MINUTES OF COURT—Wednesday, April 27, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,567—Criminal Docket

Bill of information filed.

STATE OF LOUISIANA,

VS.

JANNETTE HOSTON, et al.

No. 35,566

STATE OF LOUISIANA,

VS.

MARY BRISCOE, et al.

No. 35,567

STATE OF LOUISIANA,

VS.

JANNETTE HOSTON, et al.

No. 35,568

STATE OF LOUISIANA,

VS.

JOHN BURRELL GARNER,
VERNON JOHNNIE JORDON.

These cases came before the court on application for bills of particulars filed herein on behalf of the accused.

On motion of counsel for the accused, A. T. Tureaud was ordered enrolled as associate counsel of record for the accused. On the further motion of counsel for the accused, the Court ordered that these cases be consolidated for the purpose of this hearing.

On motion of the Assistant District Attorney, and by agreement of counsel for the accused, each of the bills of information herein was amended so as to add "(Section 7)" after "Article 103," and to insert the words "and foreseeably" between the word "unreasonably" and the word "disturb."

**MINUTE ENTRY DENYING APPLICATIONS FOR
BILLS OF PARTICULARS, ETC.**

The applications for bills of particulars were argued and submitted, and the Court, for oral reasons assigned, rendered judgment denying the applications for bills of particulars in these cases, to which ruling of the Court counsel for the defendant objected and reserved a formal bill of exception, asking that the application filed in each of these

[fol. 12] cases for bills of particulars on behalf of these defendants and the ruling of the Court be made a part of the record.

Counsel for the accused filed a motion to quash in each of these cases, which motions were assigned for argument Friday, April 29, 1960 at 2 o'clock P.M.

MINUTES OF THE COURT—Friday, April 29, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,566

STATE OF LOUISIANA,

VS.

MARY BRISCOR, et al.

No. 35,567

STATE OF LOUISIANA,

VS.

JANNETTE HOSTON, et al.

No. 35,568

STATE OF LOUISIANA,

VS.

**JOHN BURRELL GARNER,
VERNON JOHNNIE JORDON.**

MINUTE ENTRY DENYING MOTIONS TO QUASH, ETC.

These cases came before the court on motions to quash filed herein on behalf of the defendants. By agreement of counsel for the accused and the Assistant District Attorney, these cases were consolidated for the purpose of this hearing. The motions to quash were argued and submitted, and the Court, for oral reasons assigned, rendered judgment herein denying the motions to quash, to which ruling of the Court counsel for the accused objected and reserved a formal bill of exception, and asked that the Court's ruling be made a part of the record; that the bill of informations be made a part of the record, and that defendants' motions to quash be made a part of the record.

Counsel for the accused gave written notice to the court of their intention to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition. The Court granted counsel a period of ten days from this date in which to apply for writs.

[fol. 13]

No. 35,567—Criminal Docket

STATE OF LOUISIANA,

vs.

JANNETTE HOSTON, et al.

MINUTE ENTRY OF ARRAIGNMENT AND PLEA OF NOT GUILTY

The accused, charged with disturbing the peace, were present in court represented by counsel, and through counsel waived formal arraignment on said charge and pleaded not guilty.

On motion of the Assistant District Attorney, this case was assigned for trial June 2, 1960.

Clerk's Certificate to Foregoing Paper (omitted in printing).

[fol. 14]

IN THE NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

NOTICE OF INTENTION TO APPLY FOR WRITS—
Filed April 29, 1960

To the Honorable, The Judges of the Nineteenth Judicial
District Court, in and for the Parish of East Baton
Rouge, State of Louisiana:

And now into this Honorable Court come Jannette Hos-
ton, Donald Moss, Jo Ann Morris, Kenneth Johnson, Mar-
vin Robinson, John W. Johnson and Felton Valdry, de-
fendants in the above entitled and numbered cause, re-
spectfully notify and inform this Honorable Court that
defendants will apply to the Supreme Court of the State of
Louisiana in the above numbered and entitled case for
Writs of Certiorari, Mandamus and Prohibition, and such
other Writs as may be necessary to have the judgment of
Your Honor which denied, rejected and/or overruled the
defendants' "Motion to Quash" reversed, set aside and/or
declared null and void.

Respectfully submitted,

Attorneys for Defendants: Johnnie A. Jones and A.
P. Tureau, By: Johnnie A. Jones.

[File endorsement omitted]

[fol. 15]

IN THE NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

BILL OF EXCEPTIONS—May 6, 1960

To the Honorable, The Judges of the Nineteenth Judicial
District Court, in and for the Parish of East Baton
Rouge, State of Louisiana:

—1—

Be It Remembered, that in this Honorable Court on
Wednesday, April 27, 1960, the Application for Bill of
Particulars was argued and submitted and the Court for
oral reasons assigned, rendered Judgment denying the Ap-
plication for Bill of Particulars in this case, to which rul-
ing of the Court Counsel for the Defendants, Jannette Hos-
ton, Donald Moss, Jo Ann Morris, Kenneth Johnson, Mar-
vin Robinson, John W. Johnson and Felton Valdry, did
then and there except and reserve a formal Bill of Excep-
tions thereto, asking that the Application filed in this case
for Bill of Particulars on behalf of the said defendants, and
the ruling of the Court be made a part of the record.

—2—

Be It Further Remembered, that on Friday, April 29,
1960, the defendants' Motion to Quash was argued and sub-
mitted, and the Court, for oral reasons assigned, rendered
Judgment denying the Motion to Quash to which ruling of
the Court Counsel for the defendants, Jannette Hoston,
Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin
Robinson, John W. Johnson and Felton Valdry, did then
and there except and reserve a formal Bill of Exceptions,
and ask that the Court's ruling be made a part of the record;
that the Bill of Information be made a part of the record

and that defendants' Motion to Quash be made a part of the record.

[fol. 16] The defendants, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, through their Attorneys of Record, having submitted this their Bills of Exceptions to the District Attorney now tenders the same to the Court and pray that the same be signed and sealed by the Judge of the Honorable Court pursuant to the Statute in such case made and provided, which is done accordingly this 6th day of May, 1960, at Baton Rouge, Louisiana.

Fred S. LeBlanc, Judge, 19th Judicial District Court of Louisiana.

Respectfully submitted,

Attorneys for Defendants: Johnnie A. Jones and
A. P. Tureaud, By: Johnnie A. Jones.

[fol. 17]

IN THE SUPREME COURT OF LOUISIANA

Number 45213

STATE OF LOUISIANA, Appellee,

versus

JANNETTE HOSTON, et al., Defendants-Appellants.

APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION, INVOKING SUPERVISORY JURISDICTION OVER THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

Honorable Fred S. LeBlanc, Judge, Presiding

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth

Johnson, Marvin Robinson, John W. Johnson and Felton Valdry applying for Writs of Certiorari, Mandamus and Prohibition, with respect represents:

—1—

That, by the Honorable District Attorney of the Nineteenth Judicial District Court of the State of Louisiana, Parish of East Baton Rouge, your relators, all Negro college students are charged with the crime of "DISTURBING THE PEACE" under the provisions of LSA-R. S. 14:103(7) of 1950, as amended, in that, allegedly on the 28th day of March, 1960, your relators refused to move from a cafe counter seat at Kress' Store, North Third and Main Streets, Baton Rouge, Louisiana, after having been ordered to do so by the agent of Kress' Store; said conduct, allegedly, being in such manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

[fol. 18]

—2—

That your relators, each, alleged and averred that they are members of the Negro race and were on the 28th day of March, 1960, college students, matriculated at Southern University and A. & M. College, for Negroes, at Baton Rouge, Louisiana; that your relators, each, in protest of the segregation laws of the State of Louisiana did on the 28th day of March, 1960, "sit-in" a cafe counter seat reserved for members or persons of the White race, and for which activity your relators, each, were arrested, charged criminally with "DISTURBING THE PEACE," jailed and placed under a Fifteen Hundred (\$1500) Dollar bond, each.

—3—

That while the arrests and charges were for "DISTURBING THE PEACE," there was not a disturbance of the peace, except for the activity in which relators engaged to protest racial segregation and that the use of the criminal process

in such a situation denies and deprives the relators of their rights, privileges, immunities and liberties guaranteed to them, each, citizens of the United States, by the Fourteenth Amendment to the Constitution of the United States of America.

—4—

That the refusal of your relators to move from a cafe counter seat at Kress' Store in obedience of an order by an agent thereof is not a crime embraced within the terms and meanings of LSA-R. S. 14:103(7) of 1950, as amended, and if said act is a crime within the terms and meanings of said Statute, then and in that event, said Statute is sufficiently vague to render it unconstitutional on its face, thus, depriving your relators of their rights, privileges, immunities and/or liberties without due process of law and denies them the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

—5—

That the Bill of Information under which your relators are charged is insufficient to allege a crime under LSA-R. S. 14:103(7) of 1950, as amended, in that said Bill of Information fails to particularize and specify a crime set forth and specifically enumerated in said Statute; that LSA-R. S. 14:103(7) of 1950, as amended, does not specify, [fol. 19] enumerate nor embrace the crime of which your relators are charged.

—6—

That, thus, the relief which your relators seek herein under the Application for Writs of Certiorari, Mandamus and Prohibition, should be granted by this Honorable Court, in that the Statute and Bill of Information under which your relators are charged, both, are insufficient to charge a crime, otherwise your relators be deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

—7—

That the Honorable Nineteenth Judicial District Court was in error in denying your relators the Application for Bill of Particulars and refusing the Motion to Quash; that there is no adequate remedy by law, other than by this Honorable Court granting a remedy by review of this proceedings and a review of the rulings of which your relators complain, there being no appeal by right of law after a trial on the merits of this cause is had; that a trial on the merits of this cause will not produce any better situation than what is already established by the pleadings filed, argued and submitted in the Honorable Nineteenth Judicial District Court and made a part of the records thereof, certified copies of which being hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso."

—8—

That relators have given due notice to the State of Louisiana through the District Attorney and District Judge of the Parish of East Baton Rouge, of relators' intention to apply to this Honorable Court for the Writs of Certiorari, Mandamus and Prohibition, all in accordance with the law and the rules of this Honorable Court.

Wherefore, your relators respectfully pray that Writs of Certiorari, Mandamus and Prohibition be issued out of and under the seal of this Honorable Court directed to the Honorable Judge Fred S. LeBlanc of the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, commanding said Judge of said Court to certify and to send to this Honorable Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, Number [fol. 20] 35,567, State of Louisiana, Appellee versus Jannette Hoston, et al., Relators, and that the said decree or judgment of the Nineteenth Judicial District Court of Louisiana may be reversed, set aside and declared null and void by this Honorable Court, and that your relators may have such other and further relief in the premises as to

this Honorable Court may seem meet and just; and your relators will ever pray.

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 21] State of Louisiana
Parish of East Baton Rouge

AFFIDAVIT

Before Me, the undersigned authority, personally came and appeared Johnnie A. Jones, Esq., who, after being by me first duly sworn, deposes and says:

That he is one of the Attorneys for relators in the above and foregoing pleadings; that he prepared the same; that he gave notice of intention to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition in this case to the Judge of the Nineteenth Judicial District Court of Louisiana, Parish of East Baton Rouge, and to the State of Louisiana, through the District Attorney in the Parish of East Baton Rouge, State of Louisiana; and that, all of the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief.

Affiant further declares that before presenting a copy of the foregoing pleadings to this Honorable Court, a copy of same had been served upon the said Judge and upon the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, by handing a copy of same to each of said parties.

Johnnie A. Jones

Sworn to and Subscribed before me this 6th day of May, 1960.

Murphy W. Bell, Notary Public.

[fol. 22]

BRIEF**May It Please the Court:****The Opinions of the District Court**

This case, on Wednesday, April 27, 1960 and on Friday, April 29, 1960, respectively, was before the Honorable Court on "Application for Bill of Particulars" and "Motion to Quash," certified copies of which are hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso," together with an extract of the Minutes of the Court of said dates; that for oral reasons assigned, the Court rendered Judgment denying the "Application for Bill of Particulars" and the "Motion to Quash."

Jurisdiction

This case is predicated on LSA-R. S. 14:103(7) of 1950, as amended, Disturbing the Peace . . . "Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

This Honorable Court has supervisory jurisdiction under Section 10, Article 7, The Constitution, State of Louisiana of 1921, and Section 7, Rule 13 of this Honorable Court.

[fol. 23]

Syllabus

"An act or conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943).

"Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and the Courts upon another. One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defines the act denounced with such precision that person sought to

be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

"A penal statute which does not aim specifically at evils within the allowable area of state control but on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups, deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might be regarded as within its purview. Such a statute is invalid on its face." *Thornhill v. Alabama*, 310 U. S. 88 (1940).

"A state cannot, consistently with the freedom of religion and the press guaranteed by the First and Fourteenth Amendments, impose criminal punishment on a person for distributing religious literature on the sidewalk of a company-owned town contrary to regulations of the town's management, where the town and its shopping district are freely accessible to and freely used by the public in general, even though the punishment is attempted under a State Statute making it a crime for anyone to enter or remain on the premises of another after having been warned not to do so." *Marsh v. Alabama*, 326 U. S. 501 (1945-1946).

"The fundamental concept of liberty embodied in the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment. *Cantwell v. Connecticut*, 310 U. S. 296, at p. 303 (1940).

Statement of the Case

The defendants, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry (hereinafter called "Relators"), are Negro college students charged with the crime

of Disturbing the Peace under the provisions of LSA-[fol. 24] R. S. 14:103(7) of 1950, as amended; that the "Bill of Information" charges the relators with having committed a crime by refusing to move from a cafe counter seat at Kress' Store, North Third and Main Streets, Baton Rouge, Louisiana, on the 28th day of March, 1960, after having been ordered to do so by the agent of the said Kress' Store, relators' conduct being in such manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, et cetera.

Your relators in Article Seven of their "Motion to Quash" alleged the following, to-wit:

"That your defendants, each, allege and aver that they are members of the Negro race and were, on the 28th day of March, 1960, college students matriculated in Southern University and A. & M. College, for Negroes, at Baton Rouge, Louisiana; that your defendants, each, in protest of the segregation laws of the State of Louisiana, did on the 28th day of March, 1960, "sit-in" a cafe counter seat reserved for members or persons of the White race, and for which activity your defendants, each, were arrested, charged criminally with Disturbing the Peace, jailed and placed under a Fifteen Hundred (\$1500.00) Dollars bond, each."

Relators in Article Six of their "Motion to Quash" alleged and averred the following, to-wit:

"That while the arrests and charges were for "Disturbing the Peace," there was not a disturbance of the peace, except for the activity in which defendants engaged to protest segregation, and that the use of the criminal process in such a situation denies and deprives the defendants of their rights, privileges, immunities and liberties guaranteed your defendants, each, citizens of the United States, by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

Specification of Errors

1. That the Honorable Trial Court erred in refusing and/or denying relators' "Application For Bill of Particulars," the answers thereto being necessary to apprise your relators of the nature of the crime, if any, they had committed, the relators' act of commission being not a crime specified or enumerated in the statute under which relators are being prosecuted.
2. That the Honorable Trial Court erred in refusing, denying and/or overruling relators' "Motion to Quash," the "Bill of Information" under which they are charged, said Bill of Information being, patently, erroneous on its face, in that it did not allege or charge a crime enumerated and defined specifically by statute, particularly, LSA-R. S. 14:103(7) of 1950, as amended.

[fol. 25]

Issue

Whether or not the "Bill of Information" under which relators are charged is sufficient to allege a crime under LSA-R. S. 14:103(7) of 1950, as amended, or whether or not the act which the Bill of Information charges is a crime embraced in the criminal processes of the State of Louisiana, and particularly in LSA-R. S. 14:103(7) of 1950, as amended, and if so, is said provision of said Statute unconstitutional in that it deprives persons, particularly relators, of rights, liberties, privileges and immunities guaranteed by the Constitution of both the State of Louisiana and the United States of America, and, thus, violates the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States of America?

Argument

It is vigorously contended that the statute under which relators are charged is too vague to denounce a crime, and that it certainly does not make the act of your relators a crime. "One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that

act has first been denounced as a crime in a statute that defined the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

It is submitted that this case is analogous to the cases of *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943) and *Marsh v. Alabama*, 326 U. S. 501 (1945-1946), in which cases the defendants therein refused to obey orders of persons in authoritative capacity. However, the respective Courts, in essence, held that the mere refusal to obey an order of one in charge, within itself does not constitute a breach of the peace.

This Honorable Court's attention is called to the fact that the statute, under which relators are charged, discloses a number of acts or offenses, necessarily different and distinct, as embraced within its terms as constituting disturbances of the peace. However, the act of refusing to move after being ordered to do so by a proprietor or agent of a store is not enumerated among those acts or offenses as constituting a disturbance of the peace. Thus, it cannot be maintained consistently with the established jurisprudence that relators' act was calculated and construed to disturb the peace. "An act or conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943), and likewise, *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960); *State v. Verdin*, 192 La. 275, 187 So 666 (1939).

Conclusion

Thus, it is respectfully submitted that the "Bill of Information" under which your relators are charged is insufficient to charge or allege a crime, and is invalid on its face; that the act of relators, "refusing to move from a cafe counter seat after being ordered to do so by an agent thereof," is not a crime embraced in LSA-R. S. 14:103(7) of 1950, as amended.

Wherefore, relators respectfully and humbly pray that the rulings and/or Judgments of the Honorable District Court be reversed and that the "Bill of Information" as to them, each, and as far as they are concerned be declared null and void, and that your relators, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, be discharged therefrom.

Respectfully submitted,

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

Certificate of Service (omitted in printing).

[fol. 27]

REMEDIAL WRIT

IN THE SUPREME COURT OF THE STATE OF LOUISIANA

No. 45213

STATE OF LOUISIANA

VERSUS

JANNETTE HOSTON, et al.

OPINION AND JUDGMENT—Filed May 9, 1960

In Re Jannette Hoston et al.

Applying for writs of certiorari, mandamus and prohibition.

**Johnnie A. Jones, A. P. Tureaud, Attorneys for Relator.
J. St. Clair Favrot, District Attorney, Attorneys for Respondents.**

Writs denied. Relators have an adequate remedy under our Supervisory Jurisdiction in the event of a conviction.

FWH, JBH, EHMcC, JDG, WBH, RAY, LPG.

[fol. 28]

IN THE SUPREME COURT OF LOUISIANA

[Title omitted]

APPLICATION FOR REHEARING

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, defendants-relators, respectfully represents:

That the opinion and decree rendered in this cause and by this Honorable Supreme Court on Thursday, May 12, 1960, is erroneous and contrary to the law, that a rehearing should be granted in this case, for the following reasons, to-wit:

—1—

That this Honorable Court in its opinion rendered on Thursday, May 12, 1960, failed to take into consideration that relators alleged, inter alia, in paragraph seven (7) of their original petition for Application for Writs of Certiorari, Mandamus and Prohibition the following, to-wit:

“...; that a trial on the merits of this cause will not produce any better situation than what is already established by the pleadings filed, argued and submitted in the Honorable Nineteenth Judicial District Court and made a part of the records thereof, . . .”

[fol. 29] Wherefore, the premises considered, defendants-relators respectfully pray:

That after due consideration, a rehearing be granted in this case, and that finally there be judgment rendered herein as prayed for by your relators in their original petition for Application for Writs of Certiorari, Mandamus and Prohibition, and for general and equitable relief in the premises.

Attorneys for Defendants-Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

Certificate of Service (omitted in printing).

[fol. 30]

BRIEF IN SUPPORT OF APPLICATION FOR REHEARING

May It Please the Court:

A R G U M E N T

Point 1

This Honorable Supreme Court pointed out in its written opinion rendered herein on Thursday, May 12, 1960, that:

"Relators have an adequate remedy under our Supervisory Jurisdiction in the event of a conviction."

This Honorable Court's attention is called to the fact that the relators are attacking the constitutionality of LSA-R. S. 14:103(7) of 1950, as amended, Disturbing the Peace. . . . "Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

Thus, the only legal issue before this Honorable Court is:

Whether or not the act of conduct of which your relators are charged is a crime denounced and defined by said statute, or whether or not said act of conduct of which your relators are charged is a crime embraced within the criminal processes of the State of Louisiana, and particularly within the meaning of said statute?

[fol. 31] It is submitted that the instant case is parallel and analogous to the cases of *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943), and *State v. Christine*, 118 So (2d) 403 (Advanced Sheets, April 7, 1960), in which cases, respectively, this Honorable Court held:

"An act of conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute."

"Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and

the Courts upon another. One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defines the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute."

Thus, it is respectfully submitted that a rehearing should be granted herein and that your relators should be granted the relief as prayed for by them in their original petition for Application for Writs of Certiorari, Mandamus and Prohibition, and that, the Bill of Information as to your relators, each, and as far as they are concerned, the Bill of Information under which relators are charged be declared null and void, and that your relators, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, be discharged therefrom.

Respectfully submitted,

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 32] Certificate of Service (omitted in printing).

Endorsement on petition for rehearing reading "Application not considered—See Rule XII Sec. 5 Rules of this Court. May 24, 1960

FWH, JBH, EHMcC, JDG, RAV, LPG."

[fol. 33] Praeceptum (omitted in printing).

[fol. 35]

[File endorsement omitted]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

Number 35,567

Honorable Fred S. LeBlanc, Judge Presiding

STATE OF LOUISIANA,

VS.

JANNETTE HOSTON, DONALD MOSS, JO ANN MORRIS, KENNETH
JOHNSON, MARVIN ROBINSON, JOHN W. JOHNSON, and
FELTON VALDREY.

Transcript of Hearing—June 2, 1960

APPEARANCES:

Ralph Roy, Assistant District Attorney, for the State
of Louisiana.

Johnnie Jones and A. P. Tureau, for the Defendants.

[fol. 37] MR. REUBEN REYNOLDS MATHEWS, called as a wit-
ness on behalf of plaintiff, having been first duly sworn,
testified as follows:

Direct examination.

By Counsel Roy:

- Q. State your full name please sir?
- A. Reuben Reynolds Mathews.
- Q. Where are you employed?
- A. S. H. Kress and Company.
- Q. How long have you been so employed?
- A. For the company twenty-eight and a half years.

Q. In what capacity do you serve?

A. I am store manager.

Q. Were you the manager on March 28th of this year?

A. I was.

Q. On that particular date did anything unusual happen at the store involving these accused persons seated here to my left?

A. Yes, sir.

Q. What?

A. About two o'clock I was eating lunch at our lunch counter and two girls came and sat by me in the adjoining seats and the men sat down in other seats at the counter, dispersed throughout the counter.

Q. Are these the two girls and the men?

A. Yes, sir.

Q. Where were these seats that they were seated at?

A. I was about the center of the counter and the two girls sat adjoining me and I believe there were two or three men to my right about halfway to the end of the counter and the others were on the other side of me.

Q. What, if anything, happened after that?

A. I finished my meal. One of my waitresses asked if [fol. 38] they should be served and I told her to offer service at the counter across the aisle.

Q. What counter is that across the aisle?

A. Across the store.

Q. What counter is that, is that counter reserved for colored people?

A. Yes, sir, where we have the same menus, same foods and the same service.

Q. Were they seated at the counter reserved for white people?

A. Yes, sir.

Q. And were they served there?

A. No, sir.

Q. Were they requested to move over to the counter reserved for colored people?

A. No, sir.

Q. They weren't asked to go over there?

A. They were advised that we would serve them over there.

Q. Did they go over there?

A. No, they didn't. They continued to sit.

Q. Did they say anything that you heard?

A. Not that I heard.

Q. Then what happened?

A. After I finished my meal I went to the telephone and called the police department.

Q. Why did you call the police department?

A. Because I feared that some disturbance might occur.

Q. Why did you fear that?

A. Because it isn't customary for the two races to sit together and eat together.

Q. Is it customary at Kress' for them to sit together and eat together?

[fol. 39] A. No, sir.

Q. How long have you been there?

A. I have been here a year and a half.

Q. And was that custom prevailing when you got there?

A. Yes.

Q. Was that the custom of the store?

A. For them to eat separately, yes.

Q. They have separate facilities, is that right?

A. Yes.

Q. Then what happened?

A. I advised the police department that they were seated at the counter reserved for whites, and within a short time the officers came in and I observed that they spoke to some of them.

Q. And what happened?

A. They got up, and they called the uniformed officers in from outside, and they all got up and went out.

Q. Now, when was it that they got up?

A. After the officers had talked to them.

Q. Were you there when they talked to them?

A. Yes, but I wasn't within hearing distance though.

Q. Did they all come in together and sit down together in one group or did they come in,—

A. As they approached the counter they were not in one group, separately, possibly in pairs.

Q. When service was offered them at the colored counter they didn't move?

A. No.

Q. And that's why you called the officers?

A. Yes.

Q. When the officers,—did the officers take them away after they talked to them?

[fol. 40] A. Yes, sir.

Q. And did they take them to the counter reserved for colored people or did they take them outside?

A. They took them out of the door on the Main Street side.

Q. You say you have been connected with Kress' for twenty years?

A. Twenty-eight years.

Q. Have you been connected with Kress' down here that long?

A. No, I came here a year and a half ago.

Q. Where were you with them before that?

A. Florida, Texas, California, Tennessee.

Cross examination.

By Counsel Jones:

Q. Mr. Mathews, do you know what these two ordered at this cafe counter seat,—I mean these defendants?

A. No, sir, I don't know what they ordered.

Q. But you testified that they were sitting there with the whites and it wasn't customary for them to sit and eat at this same counter, is that right?

A. That's correct.

Q. Is it customary that white and colored all come into Kress Store and make other purchases at the same counters at the same time?

A. That's correct.

Q. That's all right, is it not sir?

A. That is correct.

Q. The only thing that is off-limits to them is this particular counter seat?

A. You made the statement. I didn't.

Q. I'm asking you, is the only thing off-limits this cafe counter seat at which they were sitting?

A. The wording "off-limits" is yours.

[fol. 41] Q. But is the only place in Kress' counters restricted to these negro defendants and students or customers of your store this cafe counter seat?

A. The only place where it is not customary for the two to shop together is the lunch counter.

Q. Were there any signs at this cafe counter seat indicating that, sir?

A. No.

Q. How would they have known there was any restriction at this particular cafe counter seat?

A. By custom and by noticing that the colored people were being served at the counter across the store. Also they were advised of that when they took their seats.

Q. Who advised them?

A. The waitresses and the stewards.

Q. Did they advise them under your instructions and according to your order as manager of the store, sir?

A. They advised them, yes.

Q. It was your orders that they be instructed to go to the other counter, is that right?

A. I say they were advised that they would be served at the other counter.

Q. Is that the only reason that you refused to serve them at this particular cafe counter seat because they were members of the negro race?

A. We did not refuse to serve them. I merely did not serve them and told them that they would be served on the other side of the store.

Q. But at this particular side of the store and at this particular counter seat is the only reason you refused to serve them because they were members of the negro race?

[fol. 42] A. We did not refuse to serve them.

Q. I'll repeat this question again. Maybe you don't understand what I'm asking. Did you refuse to serve them,—

A. I did not.

Q. Did you refuse to serve them at the particular cafe counter seat at which they were sitting because they were members of the negro race?

A. As I stated before, we did not refuse to serve them. We merely advised them they would be served on the other side of the store.

Q. Let me ask you this question then. Did you serve them at the cafe counter seat at which they were sitting?

A. No, we did not serve them.

Q. Why didn't you?

A. Because it was not customary to serve colored people at that counter.

Q. Did you talk to any of the defendant persons?

A. Not directly.

Q. Did these defendants do anything other than sit at this cafe counter seat that you would consider would be disturbing the peace?

A. No, sir.

Q. Why did you consider their sitting at this cafe counter seat disturbing the peace?

Counsel Roy: I object unless he is familiar with R. S. 14:103, and its sub-sections.

By the Court:

Q. Are you familiar with the law dealing with disturbing the peace?

A. Vaguely.

The Court: I think the objection is good then. He is not a lawyer.

[fol. 43] By Counsel Jones:

Q. Mr. Mathews, did you consider these defendants disturbing the peace by sitting at this counter?

Counsel Roy: I object your Honor.

The Court: That's a legal conclusion. I sustain the objection.

Q. Did you consider these defendants violating the law while sitting at this cafe counter?

Counsel Roy: I object to that.

The Court: The actions speak for themselves, and it would be asking for this man's opinion on the law and he is not a lawyer.

Q. Do you have any policy in your store with respect to segregation of the races?

A. No, sir.

Q. None at all?

A. None at all.

Q. Then why did you ask these defendants to move from this cafe counter?

The Court: I think he hasn't testified to that. He said he advised them that they would be served elsewhere, over at the other counter. He said he did not refuse to serve them at this particular counter. What he did was, he advised them they would be served over at the other counter. So, you can't assume he has testified to a fact when he has not actually testified to that fact. You can [fol. 44] interrogate him as to why he advised them to go over to that other place.

Mr. Jones: I adopt your Honor's question.

Q. Answer it.

A. Restate it, please.

Q. Why did you advise these defendants to go over to the other cafe counter seats?

A. Because by custom we serve colored people at the other counter.

Q. That's the custom of your store?

A. Right.

Redirect examination.

By Counsel Roy:

Q. That's the custom, not of your store but the custom of your employer, is that right, custom of the people you work for, not your custom?

A. Correct.

Recross examination.

By Counsel Jones:

Q. In asking or advising these defendants to go to the other cafe counter seat did you at any time think that you were acting according to law?

Counsel Roy: I object to that.

The Court: I sustain the objection.

By the Court:

Q. Your store is located where, Mr. Mathews?

A. Third Street.

Q. Is that in the City of Baton Rouge?

A. Yes.

Q. Parish of East Baton Rouge?

[fol. 45] **A.** Yes.

Witness excused.

CAPTAIN ROBERT WEINER, called as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

Direct examination.

By Counsel Roy:

Q. State your full name.

A. Robert Weiner.

Q. You are a Captain at the City Police?

A. That's right.

Q. Did you have occasion to on March 28th of this year participate in the arrest of these accused persons seated to my left at Kress' Store here in the City of Baton Rouge?

A. That's right.

Q. Tell the Judge exactly what, if anything, you said to them or what, if anything, was said to them by anyone in your presence preparatory or immediately previous to their arrest?

A. Chief Arrighi and I had gone to the store and we entered the store from the Main Street entrance which was the closest to the lunch counter, and we noticed several of these people sitting at the counter. Chief Arrighi proceeded to the counter where they were sitting and asked them to leave.

Q. What counter were they seated at?

A. They were seated at the lunch counter reserved for the white people. One of the defendants said something about wanting to get a glass of ice tea but she was told they were disturbing the peace and violating the law by sitting there and asked to leave again, and when none of them made a move to get up and leave Chief Arrighi told me to place them under arrest. I went to the door, the Main Street entrance, and called two of the officers who [fol. 46] were waiting outside. They came in. They took these people outside and placed them in the patrol wagon and brought them down to police headquarters.

Q. When they were asked to get up and leave by Chief Arrighi, were they seated at the counter at that time?

A. Yes, they were.

Q. And did they refuse to leave until they were placed under arrest?

A. Yes.

Cross examination.

By Counsel Jones:

Q. How did you know that these particular cafe counter seats were reserved for whites?

A. Because the store had always had this counter reserved for white people. They also have a section where the colored people used to buy their food.

Q. Did you see any signs saying reserved for whites?

A. No, I didn't see any signs.

Q. Did you see any signs saying for white only?

A. No, I didn't see any signs at all.

Q. Did you see any signs saying for colored only?

A. I just said I didn't see any signs at all.

Q. Did you see any negroes in the store at other places than at these counter seats?

A. Oh, there were several negroes in there standing, yes.

Q. Did you arrest them?

A. No, I didn't arrest them.

Q. Why didn't you arrest them?

A. Because I wasn't told to.

Q. Did these defendants do anything other than sit at these particular cafe counter seats that you would consider disturbing the peace or in violation of any law?
[fol. 47] A. Well, other than the fact that one of them mentioned something about the ice water nothing else was said.

Q. Do I take by that that they hadn't done anything other than sit at these particular cafe counter seats that you considered disturbing the peace?

A. That's the only thing that I saw happen.

Q. The only reason you considered that as disturbing the peace there was because they were members of the negro race, is that right?

A. I was there under orders of Chief Arrighi and Chief Arrighi gave me orders to place them under arrest, which I did.

Q. Did you know why they were placed under arrest?

A. Because they were disturbing the peace according to the law.

Q. How were they disturbing the peace?

A. By sitting there.

Q. By sitting there?

A. That's right.

Q. Were there any other persons sitting there?

A. I don't believe; I don't recall.

Q. It is your testimony their mere sitting there was disturbing the peace, is that right sir?

A. That's right.

Q. And that is because they were members of the negro race?

A. That was because that place was reserved for white people.

Q. Sir, do you know who reserved these particular places for white people?

A. Well, I imagine the stores who own these lunch rooms or whatever the case may be have certain sections,—as I said before this section was reserved for the white people. They also had another section where the negro people were served.

Q. Is it your testimony that because these defendants, [fol. 48] being members of the negro race, sat in these seats reserved for white people constituted,—

Counsel Roy: I object to that. I think it is for this Court to determine if there has been a violation of law.

The Court: It is objectionable because it is not what he considers. He does not pass on the law; he doesn't interpret the law. All he can testify to are the facts he observed, things he saw, heard and witnessed at the scene. Don't ask him to express an opinion based on those facts as to whether or not they were violating the law, because he doesn't interpret the law.

Q. Why did you arrest and place these defendants under arrest?

A. Because I was ordered to do so by the Chief of Police.

By the Court:

Q. Do you identify all of these accused as the ones in Kress Store on that occasion?

A. Yes, sir.

Q. Seated at the counter?

A. Yes, sir.

Q. And they are the ones that the police arrested on that occasion?

A. Yes.

Witness excused.

Counsel Roy: The State rests.

[fol. 49]

FINDING OF GUILT

The Court: I ask the defendants to stand up.

(Defendants stood.)

The Court: The evidence in this case put on by the State is not disputed and it is to this effect, that these

accused were in Kress' store in Baton Rouge on the date alleged in the bill of information and that they took seats at the lunch counter which by custom had been reserved for white people only. They were advised by an employee of that store, or by the manager, that they would be served over at the other counter which was reserved for colored people. They did not accept that invitation; they remained seated at the counter which by custom had been reserved for white people. The officers were called and the officers talked to these accused, or some of them, and the defendants continued to remain seated at this particular counter. That testimony is uncontradicted, and, in the opinion of the Court, the action of these accused on this occasion was a violation of Louisiana Revised Statutes, Title 14, Section 103, Article 7, in that the act in itself, their sitting there and refusing to leave when requested to, was an act which foreseeably could alarm and disturb the public, and therefore was a violation of the Statute that I [fol. 50] have just mentioned. I, accordingly, find each and every one of them guilty as charged, having been convinced beyond a reasonable doubt of their guilt.

Counsel Turean: We reserve a bill of exception to your Honor's ruling and ask that the bill and your Honor's ruling on the charges be made a part of the bill of exception. We further ask that sentence in this matter be deferred.

Counsel Jones: We now and here inform the Court that we intend to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition.

The Court: All of these accused are on bond, is that correct?

Counsel Jones: Yes, sir.

The Court: In this matter, in accordance with the request of defense counsel, the Court defers sentence, and meanwhile the accused are to remain on their present bonds, and sentence is deferred until Tuesday, July 5, 1960.

Testimony closed.

[fol. 51]

IN THE NINETEENTH JUDICIAL DISTRICT COURT
DIVISION "A"

MINUTES OF COURT—Thursday, June 2, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,567—Criminal Docket

STATE OF LOUISIANA,

VS.

JANNETTE HOSTON, DONALD MOSS, JO ANN MORRIS, KENNETH JOHNSON, MARVIN ROBINSON, JOHN W. JOHNSON, and FELTON VALDEY.

This case came on for trial in accordance with previous assignment, the accused, charged with disturbing the peace, being present in court represented by counsel.

On motion of counsel for the accused, the Court ordered a sequestration of witnesses in this case.

MINUTE ENTRY OF FINDING OF GUILT

Evidence was introduced and the case submitted. Whereupon, the Court, for oral reasons assigned, found each of the accused guilty as charged, to which ruling of the court counsel for the accused objected and reserved a formal bill of exception. Counsel for the accused gave notice to the court of their intention to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition.

Sentence deferred until July 5, 1960.

Clerk's Certificate to Foregoing Paper (omitted in printing).

[fol. 52]

IN THE NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

MOTION FOR A NEW TRIAL—Filed July 5, 1960

And now come the said Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry (hereinafter referred to as "Defendants"), through their undersigned counselor, and move the Court that the verdict of this Honorable Court rendered herein on Thursday, June 2, 1960, be set aside and a new trial ordered, for the following reasons, to-wit:

—1—

That said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that the defendants, neither of them, were ever ordered to move from a cafe counter seat at Kress' Store at North Third and Main Streets, Baton Rouge, Louisiana, by an agent of said Store as so alleged in the Bill of Information under which the said defendants are charged: that the agent or manager of the said Kress' Store merely advised the said defendants that they would be served at another cafe counter other than the cafe counter at which the said defendants were sitting; that said agent advised the defendants that they would be served at a cafe counter which was customarily reserved for colored people; that the defendants were advised that they would be served at the cafe counter seat reserved for colored people because the defendants were seated at the counter reserved for white people by custom, only.

[fol. 53]

—2—

That it is clearly shown by the evidence adduced on the trial of said cause that the said verdict is contrary to the law and the evidence since the said Bill of Information alleges that the defendants refused to move from a cafe counter seat at the said Kress' Store after having been ordered to do so by the agent of the said Kress' Store as distinguished from being advised that they, defendants, would be served at some other cafe counter, which, by custom, was reserved for colored people or members of the Negro race.

—3—

That the said verdict is contrary to the law and evidence in that it is repugnant to and in violation of Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and also repugnant to and in violation of the First and Fourteenth Amendments to the Constitution of the United States; that said verdict deprives the said defendants of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as guaranteed by the provisions of the Constitutions of the State of Louisiana and of the United States of America, respectively.

Wherefore, your movers pray that, after due proceedings had, the verdict of the Honorable Court be set aside and a new trial ordered herein.

Jannetie Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson, Felton Valdry.

Attorneys for Defendants: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 54] *Duly sworn to by Jannette Hoston, Donald Moss, et al., jurat omitted in printing.*

[File endorsement omitted]

[fol. 55]

IN THE NINETEENTH JUDICIAL DISTRICT COURT
DIVISION "A"

MINUTES OF COURT—Tuesday, July 5, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,567—Criminal Docket

STATE OF LOUISIANA

VS.

JANNETTE HOSTON, et al.

MINUTE ENTRY OVERRULING MOTION FOR NEW TRIAL

The accused, having previously been tried and found guilty of disturbing the peace, were this day present in court represented by counsel.

The accused, through counsel, filed a motion for a new trial. The motion was argued and submitted, and the Court, for oral reasons assigned, overruled the motion for a new trial, to which ruling of the Court counsel for the accused excepted and reserved a formal bill of exception. Counsel for the accused stated to the court that he would like to renew all reservations and motions previously filed, all notices previously given, and all bills of exception previously taken.

MINUTE ENTRY OF SENTENCE

The accused were brought before the bar for sentence. Whereupon, the Court sentenced each of the accused, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, to pay a fine of \$100.00 and costs, or in default of payment of said fine and costs to be confined in the parish

jail for ninety days, and in addition thereto to be confined in the parish jail for thirty days, the latter part of this sentence to run consecutively with the first part of this sentence in the event of non-payment of the fine and costs, to which sentence counsel for the accused excepted and reserved a formal bill of exception. Counsel for the accused requested that the accused be released on their present bonds and gave notice to the Court and opposing counsel of his intention to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and [fol. 56] prohibition. The Court granted counsel for the accused until July 20, 1960 at 10 o'clock A.M. for the purpose of applying to the Supreme Court for writs, and ordered the accused released on their present bonds pending the application for said writs.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 57]

IN THE NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

BILL OF EXCEPTIONS—July 15, 1960

To the Honorable, The Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

—1—

Be It Remembered, that on Thursday, June 2, 1960, this case came on for trial in accordance with previous assignment, the defendants, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, being present in Court represented by Counsel. Evidence was introduced and the case was submitted. Whereupon, the Court, for oral reasons

assigned, found each of the said defendants guilty of disturbing the peace, as charged, to which ruling or verdict of the Court Counsel for the defendants did then and there object and reserve a formal Bill of Exception thereto and gave notice to the Court and to the opposing Counsel of their intention to apply to the Supreme Court of the State of Louisiana for Writs of Certiorari, Mandamus and Prohibition.

—2—

Be It Further Remembered, that the defendants, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, having previously been tried and found guilty of disturbing the peace, were on the 5th day of July, 1960, present in Court represented by Counsel; that the defendants, through Counsel, filed a "Motion For a New Trial," which motion was argued and submitted, and the Court, for oral reasons assigned overruled the Motion for a New Trial, to which [fol. 58]-ruling of the Court Counsel for the defendants did then and there except and reserve a formal Bill of Exception and requested that all reservations, motions, notices and Bills of Exceptions previously filed, taken and/or given be renewed.

—3—

Be It Further Remembered, that on Tuesday, July 5, 1960, the defendants, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, were brought before the Bar for sentence. Whereupon, the Court sentenced each of the said defendants to pay a fine of One Hundred and No/100 (\$100.00) Dollars and costs, or in default of payment of said fine and costs to be confined in the Parish jail for Ninety (90) days, and in addition thereto to be confined in the Parish jail for Thirty (30) days, the latter part of this sentence to run consecutively with the first part of this sentence in the event of non-payment of the fine and costs, to which sentence Counsel for the defendants did then and there except and reserve a formal Bill of Exception and requested that the said defendants, each, be released on their present bonds and gave notice to the Court and op-

posing Counsel of his intention to apply to the Supreme Court of the State of Louisiana for Writs of Certiorari, Mandamus and Prohibition.

The defendants, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, through their Attorneys of Record, having submitted this their Bill of Exceptions to the District Attorney, now tenders the same to the Court and pray that the same be signed and sealed by the Judge of the Honorable Court pursuant to the statute in such case made and provided, which is done accordingly this 15th day of July, 1960, at Baton Rouge, Louisiana.

Fred S. LeBlanc, Judge, 19th Judicial District Court of Louisiana.

Respectfully submitted,

Attorneys for Defendants: Johnnie A. Jones and
A. P. Tureaud, By: Johnnie A. Jones.

[fol. 59]

IN THE SUPREME COURT OF LOUISIANA

Number 45337

STATE OF LOUISIANA, Appellee

versus

JANNETTE HOSTON, et al., Defendants-Appellants

APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION, INVOKING SUPERVISORY JURISDICTION OVER THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

Honorable Fred S. LeBlanc, Judge, Presiding
To the Honorable, Chief Justice and Associate Justices of
the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of
Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth

Johnson, Marvin Robinson, John W. Johnson and Felton Valdry (hereinafter referred to as "Relators") applying for Writs of Certiorari, Mandamus and Prohibition, with respect represents:

—1—

That relators show that this cause was previously before this Honorable Supreme Court on an "Application For Writs of Certiorari, Mandamus and Prohibition," under Case Number 45,213, State of Louisiana, Appellee, versus Jannette Hoston, et al., Defendants-Appellants; that relators do hereby plead the filings and pleadings of said cause Number 45,213, State of Louisiana, Appellee, versus Jannette Hoston, et al., Defendants-Appellants, and make same a part hereof, by reference thereto, the same as if written herein "in extenso".

—2—

That the Honorable Court aquo erred in overruling relators' Motion For a New Trial; that the evidence adduced on the trial of this cause clearly established that the relators [fol. 60] herein, neither of them, were ever ordered to move from a cafe counter seat at Kress' Store at North Third and Main Streets, Baton Rouge, Louisiana, by an agent of said Store as so alleged in the Bill of Information under which your relators herein are charged; that the agent or manager of the said Kress' Store merely advised your relators that they would be served at another cafe counter seat other than the cafe counter seat at which your relators were seated (Tr. 4 and 10); that said agent advised your relators that they would be served at a cafe counter which was customarily reserved for colored people as counter-distinguished from being ordered to move from the cafe counter seat at which your relators were seated as so alleged in the said Bill of Information (Tr. 4, 6, 7, 8, 9, and 10).

—3—

That the verdict and sentence of the Honorable Court aquo are in error in that same are contrary to the law and evidence and repugnant to and in violation of Article 1,

Sections 2 and 3 of the Constitution of Louisiana of 1921, and of the First and Fourteenth Amendments to the Constitution of the United States, depriving relators of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as constitutionally guaranteed all citizens of the State of Louisiana and of the United States.

—4—

Relators show that a true original duplicate copy of their "Motion For a New Trial" is hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso"; that relators allege and aver that there is no adequate remedy by law, other than by this Honorable Court granting a remedy by review of these proceedings and a review of the rulings of which your relators complain, there being no appeal by right of law after the trial on the merits have been had.

—5—

That relators have given notice to the State of Louisiana through the District Attorney and District Judge of the Parish of East Baton Rouge of relators' intention to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition, all in accordance with the law and rules of this Honorable Court.

[fol. 61] Wherefore, your relators respectfully pray that Writs of Certiorari, Mandamus and Prohibition be issued out of and under the seal of this Honorable Court, directed to the Honorable Judge Fred S. LeBlanc of the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, commanding said Judge of said Court to certify and send to this Honorable Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its Docket, Number 35,567, State of Louisiana versus Jannette Hoston, et al., and that the said decrees or judgments of the Nineteenth Judicial District Court of Louisiana may be reversed, set aside and declared null and void by this Honorable Court,

and that your relators may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your relators will ever pray.

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 62] State of Louisiana
Parish of East Baton Rouge

AFFIDAVIT

Before Me, the undersigned authority, personally came and appeared Johnnie A. Jones, Esq., who, after being by me first duly sworn, deposes and says:

That he is one of the Attorneys for relators in the above and foregoing pleadings; that he prepared the same; that he gave notice of intention to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition in this case to the Judge of the Nineteenth Judicial District Court of Louisiana, Parish of East Baton Rouge, and to the State of Louisiana, through the District Attorney in the Parish of East Baton Rouge, State of Louisiana; and that, all of the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief.

Affiant further declares that before presenting a copy of the foregoing pleadings to this Honorable Court, a copy of same had been served upon the said Judge and upon the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, by handing a copy of same to each of said parties.

Johnnie A. Jones

Sworn to and Subscribed before me this 19th day of July, 1960.

Murphy W. Bell, Notary Public.

May It Please The Court:

The Opinions of the District Court

This case, on Thursday, June 2, 1960, was before the Honorable Court aquo on its merits. Evidence was introduced and the case submitted. Whereupon, the Court for oral reasons assigned, found your relators, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, guilty of disturbing the peace, as charged, all in accordance with the Minutes of the Honorable Court aquo, dated Thursday, June 2, 1960, a True and Correct Extract Copy of which is hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso"; that on Tuesday, July 5, 1960, your relators having previously been tried and found guilty of disturbing the peace, filed a Motion For a New Trial. The Motion was argued and submitted, and the Honorable Court aquo, for oral reasons assigned, overruled the Motion For a New Trial, and sentenced each of your relators to pay a fine of One Hundred and No/100 (\$100.00) Dollars and costs, or in default of payment thereof to be confined in the Parish Jail for Ninety (90) days, and in addition thereto to be [fol. 64] confined in the Parish Jail for Thirty (30) days, the latter part of this sentence to run consecutively with the first part of this sentence in the event of non-payment of the fine and costs, all in accordance with the Minutes of the Honorable Court aquo of Tuesday, July 5, 1960, a True and Correct Extract Copy of which is hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso".

Jurisdiction

This case is predicated on LSA-R. S. 14:103(7) of 1950, as amended, Disturbing the Peace. . . . "Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

This Honorable Court has supervisory jurisdiction under Section 10, Article 7, The Constitution, State of Louisiana of 1921, and Section 7, Rule 13 of this Honorable Court.

Syllabus

"The likelihood, however great, that substantive evil result cannot alone justify a restriction upon freedom of speech or press, but the evil itself must be substantial and serious and even the expression of legislative preferences or beliefs cannot transform minor matters of public inconvenience or annoyance into substantive evils of sufficient weight to warrant curtailment of liberty of expression." *Graham v. Jones*, 200 La. 137, 7 So (2d) 688 (1942).

"The constitutional guarantee of due process of law does not mean a procedure that endangers the innocent, but it means procedure that preserves those enduring principles enunciated in the Bill of Rights and the preservation of those basic rights termed inalienable in the Declaration of Independence." *State v. Straughan*, 229 La. 1036, 87 So (2d) 528 (1956).

"The right of personal liberty is one of fundamental rights guaranteed to every citizen, and any unlawful interference therewith may be resisted." *City of Monroe v. Ducas*, 203 La. 974, 14 So (2d) 781 (1943).

"An act or conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943).

"Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and the Courts upon another. One cannot be held accountable [fol. 65] or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defines the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

"A penal statute which does not aim specifically at evils within the allowable area of state control but on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups, deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might be regarded as within its purview. Such a statute is invalid on its face." *Thornhill v. Alabama*, 301 U. S. 88 (1940).

"A state cannot, consistently with the freedom of religion and the press guaranteed by the First and Fourteenth Amendments, impose criminal punishment on a person for distributing religious literature on the sidewalk of a company-owned town contrary to regulations of the town's management, where the town and its shopping district are freely accessible to and freely used by the public in general, even though the punishment is attempted under a State Statute making it a crime for anyone to enter or remain on the premises of another after having been warned not to do so." *Marsh v. Alabama*, 326 U. S. 501 (1945-1946).

"The fundamental concept of liberty embodied in the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment." *Cantwell v. Connecticut*, 310 U. S. 296, at p. 303 (1940).

Statement of the Case

Your relators, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, are all Negro college students having been charged with, tried and sentenced for the crime of Disturbing the Peace under the provisions of LSA-R. S. 14:103(7) of 1950, as amended; that the Bill of Information charges the relators with having committed a crime on the 28th day of March, 1960, by refusing to move from

a cafe counter seat at Kress' Store at North Third and Main Streets, Baton Rouge, Louisiana, after having been ordered to do so by an agent thereof. However, the evidence adduced on the trial of this cause established the fact that your relators were never ordered to move from said [fol. 66] cafe counter seat by an agent thereof as alleged in the Bill of Information, but that, your relators were advised by an agent or manager of the said Kress' Store that they would be served at a cafe counter which was customarily reserved for Colored people as counter-distinguished from being ordered to move from the cafe counter seat at which your relators were seated, the seats in which your relators were sitting, by custom, were reserved for White people (Tr. 4, 6, 7, 8, 9 and 10).

Specification of Errors

1. That the Honorable Trial Court erred in finding your relators guilty as charged. That the verdict of the Honorable Trial Court is contrary to the law and to the evidence, in that, your relators were merely advised that they would be served at a cafe counter customarily reserved for Colored people as counter-distinguished from being ordered to move from the cafe counter customarily reserved for White people.
2. That the verdict of the Honorable Trial Court is contrary to the law and to the evidence; that it denies and deprives your relators of their rights, privileges, immunities and liberties, due process and equal protection of the law guaranteed by the Constitutions of the State of Louisiana and of the United States.
3. That for reasons aforesaid, the Honorable Trial Court erred in overruling your relators' Motion For a New Trial.
4. That for reasons aforesaid, the sentence of the Honorable Trial Court is in error and contrary to the law and the evidence.

Issue

Whether or not the mere act of conduct of your relators, Negro college students, sitting in seats at a cafe counter reserved, by custom, for White people constitute a crime within meaning and contemplation of or whether or not the said act of conduct of your relators is a crime embraced in LSA-R. S. 14:103(7) of 1950, as amended, and if so, is said provision of said statute unconstitutional, depriving your relators of their rights, privileges, liberties and immunities and denying them due process and equal protection of the law guaranteed by the Constitutions of the State of Louisiana and of the United States?

Argument

The evidence adduced on the trial of this cause, without equivocation, established that your relators were merely advised by an agent or the manager of said Store that they would be served at a cafe counter which was, by custom, reserved for Colored people as counter-distinguished from being ordered to move from a cafe counter reserved, [fol. 67] by custom, for White people or as so alleged in the Bill of Information. "One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defined the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

Herewith, relators file an original duplicate copy of the "Transcript of Testimony" of the evidence adduced and taken on the trial of the merits of this cause on Thursday, June 2, 1960, and make same a part hereof as if written herein "in extenso."

Conclusion

Thus, it is respectfully submitted that the Bill of Information under which your relators are charged is

insufficient to allege a crime based on the evidence adduced on the trial of this cause, and that the act of conduct of your relators is not a crime embraced within the meaning and contemplation of LSA-R. S. 14 103 (7) of 1950, as amended.

Wherefore, relators respectfully and humbly pray that the rulings and/or judgments of the Honorable Trial Court be reversed and that the verdict and sentence as to them, each, and as far as they are concerned be declared null and void and that your relators, Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, be discharged therefrom.

Respectfully submitted,

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 68] Certificate of service (omitted in printing).

[fol. 70]

IN THE SUPREME COURT OF LOUISIANA
New Orleans

By Hawthorne, J.:

No. 45,337

STATE OF LOUISIANA

v.

JANNETTE HOSTON, et al.

OPINION AND JUDGMENT—October 5, 1960

In re: Jannette Hoston et al. applying for writs of certiorari and prohibition.

Writs refused.

This court is without jurisdiction to review facts in criminal cases. See Art. 7, Sec. 10, La. Constitution of 1921.

The rulings of the district judge on matters of law are not erroneous. See *Town of Pontchatoula vs. Bates*, 173 La., 824, 138 So., 851.

FWH, JBH, EHM^cC, WBH, RAV, LPG, HFT.

[fol. 71]

IN THE SUPREME COURT OF LOUISIANA

[Title omitted]

PETITION FOR STAY OF EXECUTION AND ORDER
GRANTING SAME—October 7, 1960

To the Honorable, Chief Justice and Associate Justices of
the Supreme Court of the State of Louisiana:

The petition of Jannette Hoston, Donald Moss, Jo Ann Morris, Kenneth Johnson, Marvin Robinson, John W. Johnson and Felton Valdry, defendants in the above numbered and entitled cause, with respect represents:

—1—

That the decree of this Honorable Court, rendered October 5, 1960, refusing their Application For Writs of Certiorari, Mandamus and Prohibition and, thus, affirming the verdict and sentence of the Nineteenth Judicial District Court of Louisiana, Division "A", is final, there being no right of rehearing therefrom.

—2—

Petitioners aver that the opinion and decree of this Honorable Court deprives them of their rights guaranteed them under Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and of the First and Fourteenth Amendments to the Constitution of the United States, depriving them of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as constitutionally guaranteed all citizens of the State of Louisiana and of the United States.

[fol. 72]

—3—

Petitioners aver that the opinion and decree of this Honorable Court deprives them of their rights guaranteed them under Article 1, Sections 2 and 3 of the Constitution of the State of Louisiana and by the 14th Amendment of the Federal Constitution and that they were tried and convicted, over their protest, without due process of law, to-wit:

That the act of conduct of which the defendants are charged is not a crime denounced and defined by LSA-R. S. 14:103 (7) of 1950, as amended, nor is it a crime embraced within the meaning and contemplation of said Statute or within the criminal processes of the State of Louisiana, unless, or otherwise, in violation of the said Constitutional provisions, respectively.

—4—

Petitioners aver that they timely raised the said questions in the lower Court at the time of their arraignment and after their conviction in a motion for a new trial and in this Honorable Court by their Assignment of Errors.

—5—

Petitioners aver that they are desirous of applying to the Supreme Court of the United States for a Writ of Certiorari and Review, or appeal, to review the decision of This Honorable Court upon the issues shown by the record in this case; and that petitioners desire that they be given a stay or delay in which to apply to said Court; and that the decree or mandate of this Honorable Court be stayed so that petitioners will have an opportunity to so present their application to the Supreme Court of the United States for relief.

[fol. 73] Wherefore, petitioners pray that after due consideration that this Honorable Court grant them a reasonable stay of execution and that they be permitted a delay of 90 days in which to prepare and file in the Supreme Court of the United States their Application for a Writ of Certiorari or appeal to review the decision of this Honorable

Court and that 'he mandate and decree of this Honorable Court be withheld accordingly.

And for all general and equitable relief.

Attorneys for Petitioners: Johnnie A. Jones, A. P. Tureaud.

*Duly sworn to by Jannette Hoston, Donald Moss, et al.,
jurat omitted in printing.*

ORDER

Let Petitioners be granted a stay of execution of the decree of this Honorable Court for a period of 60 days.

Jno. B. Fournet, Chief Justice.

New Orleans, Louisiana
October 7th, 1960

[fol. 74] Praecipe (omitted in printing).

[fol. 76] Clerk's Certificates to foregoing transcript
(omitted in printing).

[fol. 78]

SUPREME COURT OF THE UNITED STATES

No. 619—October Term, 1960

JANNETTE HOSTON, et al., Petitioners,

VS.

LOUISIANA.

ORDER ALLOWING CERTIORARI—March 20, 1961

The petition herein for a writ of certiorari to the Supreme Court of the State of Louisiana is granted. The case is consolidated with Nos. 617 and 618 and a total of three hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

LIBRARY
SUPREME COURT. U. S.

Office-Supreme Court, U.S.

FILED

DEC 31 1950

JAMES E. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1960

No. ~~000~~ 26

JOHN BURRELL GARNER, et al.,

Petitioners,

—v.—

STATE OF LOUISIANA.

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF LOUISIANA**

A. P. TUREAUD
1821 Orleans Avenue
New Orleans, Louisiana

JOHNNIE A. JONES
Baton Rouge, Louisiana

THURGOOD MARSHALL
JACK GREENBERG
10 Columbus Circle
New York 19, New York

Attorneys for Petitioners

WILLIAM COLEMAN, JR.
LOUIS H. POLLAK
ELWOOD H. CHISOLM
JAMES M. NABRIT, III
Of Counsel